

CONDENSED COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSIAH KUENZI,	:	CIVIL ACTION
Plaintiff	:	
	:	
vs.	:	
	:	
EUROSPORT CYCLES, INC.	:	
And	:	
DON MURRAY d/b/a	:	
EUROSPORT CYCLES, INC.	:	
And	:	
CAPITAL ONE AUTO FINANCE,	:	
INC.	:	
And	:	
JOHN DOES 1-10,	:	
Defendants	:	NO. 08-3906

Monday, July 26, 2010

Oral deposition of JOSIAH KUENZI held at WEISBERG LAW, P.C., 7 South Morton Avenue, Morton, PA, on the above-mentioned date, commencing at 9:30 a.m., before Kimberly Pepper, Professional Court Reporter and Notary Public of the Commonwealth of Pennsylvania.

LOVE COURT REPORTING, INC.
1500 Market Street
12th Floor, East Tower
Philadelphia, Pennsylvania 19102
(215) 568-5599

Josiah Kuenzi

APPEARANCES:			Page 2	Page 4
1	WEISBERG LAW, P.C.		1	DEPOSITION SUPPORT INDEX
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4	Morton, PA 19070		4	PAGES: None
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6	Counsel for the Plaintiff		6	REQUESTS FOR DOCUMENTS OR INFORMATION:
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12	Counsel for the Defendant		12	MARKED QUESTIONS:
13			13	PAGES: None
14			14	
15	---		15	
16			16	
17			17	
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9				
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11	Kuenzi 1	Blank Check Owner's Manual	11	
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13	Kuenzi 3	Capital One Check to Eurosport Cycles for \$7500.00	14	
14	Kuenzi 4	November 9th, 2007 letter To Josiah Kuenzi on recent vehicle purchase	15	
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<p style="text-align: right;">Page 6</p> <p>1 your answer, otherwise, we talk over each other 2 and it gets difficult. So I'll do my best to que 3 you of that.</p> <p>4 So what was your prior address 5 before you moved to Jeffersonville? ?</p> <p>6 A. It was 369 Beach Street, Pottstown PA, 19464.</p> <p>7 Q. How long ago did you move to Jeffersonville?</p> <p>8 A. About three weeks ago.</p> <p>9 Q. How long have you been driving motorcycles?</p> <p>10 A. Probably about five years.</p> <p>11 Q. In that five years have you ever owned your 12 own motorcycle?</p> <p>13 A. Yes, I have.</p> <p>14 Q. How many motorcycles have you bought?</p> <p>15 A. Three.</p> <p>16 Q. So in 2007 I understand from your Complaint 17 that you attempted to purchase a 2003 BMW 18 motorcycle; is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. How did you come across that motorcycle and 21 decide you wanted to purchase it?</p> <p>22 A. I found the dealership through eBay 23 advertisements, and I went down to see them in 24 New Jersey.</p>	<p style="text-align: right;">Page 8</p> <p>1 A. With a loan.</p> <p>2 Q. That was the loan from Capital One Auto 3 Finance?</p> <p>4 A. Correct.</p> <p>5 Q. How did you hear about Capital One? How did 6 you come across their loan offer?</p> <p>7 A. Just searching loans on the Internet.</p> <p>8 Q. So you went to Capital One Auto Finance's 9 website?</p> <p>10 A. I believe I went to a website that would 11 search for loans. I forget which one it was, but 12 they directed me to Capital One.</p> <p>13 Q. Did you have to fill something out on the 14 Internet to get information about the loan? How 15 did the process start?</p> <p>16 A. As I recall, I filled out a pre-application, 17 and then I believe I spoke with somebody on the 18 phone.</p> <p>19 Q. Do you remember when you filled out the 20 pre-application, what date, when approximately?</p> <p>21 A. It would have been right after the -- right 22 around the 1st of November.</p> <p>23 Q. In your Complaint, and I'll note it alleges 24 that you entered into the purchase agreement for</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. Had you ever dealt with this dealership 2 before?</p> <p>3 A. No, I didn't.</p> <p>4 Q. You just found it on the Internet?</p> <p>5 A. Correct.</p> <p>6 Q. Did anybody recommend the dealership to you?</p> <p>7 Did you have any conversations with anyone else 8 who had purchased motorcycles from them in the 9 past?</p> <p>10 A. Not until after I made the purchase.</p> <p>11 Afterwards we had discussions with other people.</p> <p>12 Q. So you went down to New Jersey. Where was 13 the dealership located?</p> <p>14 A. Middlesex, New Jersey.</p> <p>15 Q. At Eurosport Cycles?</p> <p>16 A. Correct.</p> <p>17 Q. When you visited, did you view the motorcycle 18 there at the dealership?</p> <p>19 A. Yes, I did.</p> <p>20 Q. Was that the one that was there at the 21 dealership, that was the actual model that you 22 intended to purchase?</p> <p>23 A. Correct.</p> <p>24 Q. How did you plan to pay for the motorcycle?</p>	<p style="text-align: right;">Page 9</p> <p>1 the motorcycle on October 21st, 2007?</p> <p>2 A. Correct.</p> <p>3 Q. Would that have been the date that you 4 visited the dealership in New Jersey?</p> <p>5 A. No.</p> <p>6 Q. Did you go down to New Jersey before or after 7 you signed the purchase agreement?</p> <p>8 A. I went down to New Jersey the same day I 9 signed the purchase agreement which he sent the 10 one dated the 31st to me by e-mail, and then I 11 went down on the 4th to view the motorcycle and 12 write the check.</p> <p>13 Q. So would it have been between October 31st 14 and November 4th when you would have applied with 15 Capital One?</p> <p>16 A. As I recall, yes.</p> <p>17 Q. Do you recall what was said during your 18 telephone call at Capital One?</p> <p>19 A. No.</p> <p>20 Q. Do you remember what sort of information you 21 had to fill out for the pre-application on the 22 Internet?</p> <p>23 A. I don't recall. I would imagine just basic 24 name and address.</p>

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<p>1 MR. WEISBERG: Don't imagine.</p> <p>2 He doesn't want you to imagine either. If you</p> <p>3 have a memory no matter how faint it is, you can</p> <p>4 say that, but don't guess.</p> <p>5 THE WITNESS: Okay.</p> <p>6 BY MR. CHWASTYK:</p> <p>7 Q. So you said you went back there on November</p> <p>8 4th and dropped off a check for the motorcycle;</p> <p>9 is that right?</p> <p>10 A. Right.</p> <p>11 Q. Was that check the blank check for the auto</p> <p>12 loan that you received from Capital One?</p> <p>13 A. Correct.</p> <p>14 Q. Do you remember when you received that blank</p> <p>15 check in the mail? Did you receive the check in</p> <p>16 the mail from Capital One?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know when you received the blank</p> <p>19 check?</p> <p>20 A. Either the day before or on November 4th.</p> <p>21 Q. Do you remember if Capital One does offer an</p> <p>22 option where you can pay a few extra dollars for</p> <p>23 overnight mail for the blank check? Do you</p> <p>24 remember if you paid for the Express Mail?</p>	<p>Page 10</p> <p>1 attorney in discovery.</p> <p>2 Would you take a look at the</p> <p>3 front of this document. I can see it has your</p> <p>4 address and your former address in Pottstown, and</p> <p>5 it says Blank Check Owner's Manual. Do you</p> <p>6 recognize this document?</p> <p>7 A. Yes.</p> <p>8 Q. Where do you recognize this from?</p> <p>9 A. From -- I would have received it sometime</p> <p>10 after applying for the loan.</p> <p>11 Q. I'll direct your attention to page two of</p> <p>12 this document. The bottom of the page we have a</p> <p>13 check there. It's now marked void. Do you</p> <p>14 recognize that check?</p> <p>15 A. Only from the documentation submitted. I</p> <p>16 don't actually recall seeing a check that was</p> <p>17 stamped void like that.</p> <p>18 Q. I'm not implying that when you received the</p> <p>19 check it would have been marked void.</p> <p>20 A. Right.</p> <p>21 Q. It was marked void now that we're --</p> <p>22 A. Right.</p> <p>23 Q. Does that look like the check that you used</p> <p>24 to purchase the motorcycle?</p>
<p>1 A. No.</p> <p>2 MR. WEISBERG: No, you don't</p> <p>3 remember or no, you didn't?</p> <p>4 THE WITNESS: No, I didn't pay</p> <p>5 for Express Mail.</p> <p>6 BY MR. CHWASTYK:</p> <p>7 Q. Okay. When you received the check, do you</p> <p>8 remember what the packet of materials that you</p> <p>9 received looked like?</p> <p>10 A. It was just a check.</p> <p>11 Q. Was there an envelope?</p> <p>12 A. In an envelope, correct.</p> <p>13 Q. What was in the envelope?</p> <p>14 A. The check.</p> <p>15 Q. Just the blank check?</p> <p>16 A. Yes.</p> <p>17 Q. Mark that as Kuenzi 1, please.</p> <p>18 (At this time, Kuenzi Exhibit</p> <p>19 Number 1 was marked for identification.)</p> <p>20 BY MR. CHWASTYK:</p> <p>21 Q. Mr. Kuenzi, I'm showing you a document that</p> <p>22 is taken from Exhibit 3 to docket number 18 in</p> <p>23 the court's docket here which is a packet of</p> <p>24 materials that Capital One had submitted to your</p>	<p>Page 11</p> <p>1 A. Yes, it does.</p> <p>2 Q. Okay. Mr. Kuenzi, I'll represent to you that</p> <p>3 this Blank Check Owner's Manual is a packet of</p> <p>4 the materials that comes bound together in</p> <p>5 essentially this form. This is a slightly</p> <p>6 different version of the same document, and we</p> <p>7 will mark this as Kuenzi 2.</p> <p>8 I'll just note for the record</p> <p>9 this is an eight and a half x eleven sheet of</p> <p>10 paper that is folded in half and has terms or</p> <p>11 materials appearing on each half page and</p> <p>12 includes on the second page a slightly different</p> <p>13 version of the blank check.</p> <p>14 As I said, this is a newer</p> <p>15 version. I tried to get the older version of the</p> <p>16 blank check packet, but does this bound version</p> <p>17 look similar to the packet of materials that you</p> <p>18 received with your blank check for your</p> <p>19 motorcycle loan?</p> <p>20 A. I don't believe so.</p> <p>21 Q. You don't recognize that format?</p> <p>22 A. No.</p> <p>23 Q. Okay. Mark that Kuenzi 2 and mark this</p> <p>24 Kuenzi 3.</p>

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<p style="text-align: right;">Page 18</p> <p>1 A. No. I have an electronic copy. That is 2 about it.</p> <p>3 Q. You received no instructions whatsoever with 4 the check, no other materials that explained how 5 to use it, how it could be used for, nothing?</p> <p>6 A. I don't recall.</p> <p>7 Q. So you wrote a check on November 4th for the 8 motorcycle. Did you drive the motorcycle home 9 that same day?</p> <p>10 A. No.</p> <p>11 Q. Why didn't you take the motorcycle with you 12 when you left on November 4th?</p> <p>13 A. Because he needed four to six weeks to get it 14 in working order.</p> <p>15 Q. Was it a used motorcycle?</p> <p>16 A. Yes.</p> <p>17 Q. When you say he needed four to six weeks to 18 get it in working, order who is the he you 19 referred to?</p> <p>20 A. Don Murray. Donald Murray.</p> <p>21 Q. I'll ask you to clarify for me that. We have 22 there's two defendants that you've named, 23 Eurosport Cycles in New Jersey and then Don 24 Murray doing business as Eurosport Cycles located</p>	<p style="text-align: right;">Page 20</p> <p>1 conversations go on for?</p> <p>2 A. Probably until about January or February of 3 2008.</p> <p>4 Q. Okay. What happened then? Did you stop 5 calling or did he stop taking your calls?</p> <p>6 A. No. Then I said, well, I have to take action 7 if you are not going to get me -- I either need 8 my money back or need something here to happen 9 because I can't keep going on forever. I think 10 also Capital One called for the title which they 11 never received from him.</p> <p>12 Q. Just to be clear, you found Capital One's ad 13 on the Internet and applied for the loan. As far 14 as you know, there is no connection between 15 Eurosport Cycles, Don Murray and Capital One?</p> <p>16 A. Just that that was the loan company that was 17 used for the financing.</p> <p>18 Q. You used Capital One. That was your choice; 19 correct? You found them over the Internet, chose 20 to use them?</p> <p>21 A. I think Don recommended it but...</p> <p>22 Q. So January, February Capital One calls 23 looking for the title. You are still getting 24 excuses from Mr. Murray. What happened then?</p>
<p style="text-align: right;">Page 19</p> <p>1 in Cleveland, Ohio. 2 Was Don Murray the owner of 3 Eurosport Cycles? 4 A. Yes.</p> <p>5 Q. So he told you he needed four to six weeks 6 before the motorcycle would be in working order. 7 What happened next?</p> <p>8 A. Well, after four to six weeks it was around 9 Christmastime, he was on vacation, needed more 10 time so it just went on, you know, from there.</p> <p>11 Q. You said it went on from there. What do you 12 mean?</p> <p>13 A. More excuses about why it wasn't ready.</p> <p>14 Q. When was the last communication you had with 15 Mr. Murray or with Eurosport Cycles?</p> <p>16 A. Last year.</p> <p>17 Q. 2009?</p> <p>18 A. Yes.</p> <p>19 Q. Well, we will go back. Go back to Christmas 20 of 2007. He's continuing to give you more 21 excuses. How often are you talking with Mr. 22 Murray?</p> <p>23 A. At least once a week, sometimes more.</p> <p>24 Q. How long did those regular weekly</p>	<p style="text-align: right;">Page 21</p> <p>1 Did you go to talk to your lawyer at that point? 2 Did you continue to talk to Mr. Murray? 3 A. I went to Mr. Weisberg. 4 Q. Okay. But you did say you spoke to Mr. 5 Murray in 2009. Do you remember what 6 conversations you had with them later in 2009? 7 A. Yes. At the bankruptcy proceedings when I 8 tried to see if there was any way I could get at 9 least the bike in the condition that it was, but 10 since nobody had the title and he kept the title, 11 the only thing I had was the bill of sale. So 12 they said that whoever had it, since I didn't 13 have the title, it wasn't mine so. 14 Q. So Mr. Murray took \$7500.00 from the Capital 15 One blank check loan and never gave you a 16 motorcycle? 17 A. Correct. Then it went bankrupt and I saw a 18 lot of other people's motorcycles, too. 19 Q. Now, it's my understanding that you initially 20 made some payments on the Capital One loan; is 21 that right? 22 A. Correct. 23 Q. How long did you make payments for? 24 A. I don't recall. I would have to look it up,</p>

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<p style="text-align: right;">Page 22</p> <p>1 but I believe I paid around 4,000 of the loan 2 until I stopped paying it. 3 Q. Okay. 4 A. I was usually paying more than the minimum 5 because I was just hoping that it would come 6 through but... 7 Q. Okay. But you still owe I guess 8 approximately \$3500.00? 9 A. Right. 10 Q. You just mentioned that you might have some 11 documents related to this at home. I'll ask that 12 you just provide those to your attorney here this 13 week sometime if it's convenient for you to do 14 so. 15 A. Okay. 16 Q. So I'm at a loss. I understand that you got 17 a raw deal and didn't get your motorcycle and 18 lost out, that Eurosport took your money; but I'm 19 at a loss to understand what you feel Capital One 20 may have done wrong here. 21 Why are you suing Capital One? 22 MR. WEISBERG: Objection. That 23 requires a legal conclusion, but you can answer 24 the question.</p>	<p style="text-align: right;">Page 24</p> <p>1 the terms and conditions attached to that letter? 2 A. Yes. 3 Q. Were there any that you found troubling or 4 objected to? 5 A. No. 6 Q. Did you at that point contact Capital One 7 with any questions or concerns? 8 A. I don't believe so, no. 9 Q. Did you ever request to rescind the loan with 10 Capital One? 11 A. No. 12 Q. Do you remember what website it was that you 13 used to find the Capital One loan? You said 14 there was a website that searched various loan 15 sites. 16 A. It might have been Lending Tree and then, you 17 know, between that and the recommendation from 18 Don. 19 Q. When you were on Lending Tree or whichever 20 website it was, did you compare the terms and 21 conditions of Capital One's loans to those of the 22 competing offers that you might have seen on that 23 website? 24 A. I would imagine.</p>
<p style="text-align: right;">Page 23</p> <p>1 THE WITNESS: Because I didn't 2 receive the truth and lending, the check. 3 BY MR. CHWASTYK: 4 Q. Were you troubled at all by the terms of the 5 loan? Do you believe they were somehow unfair to 6 you? 7 A. Not especially. 8 Q. If you assert you didn't receive certain 9 truth and lending disclosures, had you received 10 different or additional disclosures, would that 11 have changed your mind about taking out this 12 loan? 13 A. Possibly. 14 Q. What could have changed your mind? You've 15 said that you did receive these disclosures after 16 along with this November 9th letter, Exhibit 4. 17 A. Mainly, obviously, the interest charges and 18 finance charges. 19 Q. When you filled out your application on the 20 Internet, did it at that time tell you what your 21 interest rate would be? 22 A. I don't recall. 23 Q. When you received the November 9th, 2007 24 letter, it's marked as Kuenzi 4, did you review</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. You imagine that you did compare the terms? 2 A. Yes. 3 Q. And you chose Capital One? 4 A. Right. 5 Q. So at that time you felt the terms and 6 conditions offered by the Capital One loan, were 7 those better than those offered by the competing 8 loans? 9 A. Correct. 10 Q. Are you married? 11 A. Yes. 12 Q. How long have you been married for? 13 A. Five years as of August 20th so I'm not quite 14 five years. 15 Q. Congratulations slightly in advance on your 16 anniversary. 17 Do you recall if your wife or 18 anyone else saw the blank check auto loan when 19 you received it before you wrote the check to the 20 dealership? 21 A. No. 22 Q. Do you have any plans to pay Capital One the 23 \$3500.00 that remains due on the loan? 24 A. No.</p>

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<p style="text-align: right;">Page 26</p> <p>1 Q. How were you injured by the alleged failure 2 to provide these truth and lending act 3 disclosures? What harm have you suffered?</p> <p>4 A. Well, just financial mainly and possibly 5 credit.</p> <p>6 Q. What financial injury have you suffered 7 because they allegedly didn't provide the truth 8 and lending disclosures?</p> <p>9 A. Just the losses of the loan itself and what I 10 paid out on it.</p> <p>11 Q. You actually received \$7500.00 from the loan, 12 all right, and you've paid back \$4,000.00 of that 13 and \$3500.00 remains due. How does whether or 14 not you receive the truth and lending disclosures 15 have anything to do with the fact that the dealer 16 stole your money and didn't give you a 17 motorcycle?</p> <p>18 A. It doesn't.</p> <p>19 Q. So the fact that you didn't get the truth and 20 lending disclosures doesn't really have anything 21 to do with the \$7500.00 that you lost to Don 22 Murray, does it?</p> <p>23 A. Well, no, not that. It just means that I 24 took out the loan with Capital One.</p>	<p style="text-align: right;">Page 28</p> <p>1 A. The money that I paid out to Capital One for 2 taking out the loan to Capital One.</p> <p>3 Q. The \$4,000 that you paid?</p> <p>4 A. Right.</p> <p>5 Q. Okay. But that money was supposed to get you 6 a motorcycle?</p> <p>7 A. Right.</p> <p>8 Q. It's not Capital One's fault that you didn't 9 get a motorcycle?</p> <p>10 A. No, that's not what I'm saying.</p> <p>11 Q. Okay. Have you run a credit check to get 12 your credit report lately from the reporting 13 agencies?</p> <p>14 A. Several months ago it was okay thus far.</p> <p>15 With it pending still, I just want to make sure.</p> <p>16 Q. Your Complaint also alleges that you have 17 suffered annoyance, inconvenience, humiliation, 18 embarrassment and emotional stress.</p> <p>19 Can you detail what that means?</p> <p>20 A. I have a whole file in my e-mail of all the 21 craziness and communication and all the 22 ridiculous time that it was taking up from this.</p> <p>23 Q. Does anybody else know about this dispute?</p> <p>24 Have you --</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Right.</p> <p>2 A. Right.</p> <p>3 Q. But, in fact, you're up \$3500.00 on that 4 loan? You took 7500 and paid 4,000 back?</p> <p>5 A. Right.</p> <p>6 Q. You have \$3500.00 of Capital One's money that 7 you haven't paid back.</p> <p>8 A. Well, I don't have it. Don has it but...</p> <p>9 Q. Sure. You said you were worried about your 10 credit. Has there been any issues with your 11 credit rating or your credit score that resulted 12 from this loan?</p> <p>13 A. Not that I recall thus far. I believe they 14 have put it on hold, but it's still pending in 15 the outcome so.</p> <p>16 Q. Are you aware that Capital One offered to 17 wipe out the remaining balance on this loan in 18 exchange for your settling this lawsuit?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Wouldn't that resolve any issues with 21 regard to creditworthiness or financial injury?</p> <p>22 A. Not financial injury.</p> <p>23 Q. Okay. What financial injury are we talking 24 about again?</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Yes.</p> <p>2 Q. Who else knows about it?</p> <p>3 A. Another attorney that referred me to Mr. 4 Weisberg.</p> <p>5 Q. Are you embarrassed that that other attorney 6 knows about this? Are you humiliated? I'm 7 trying to understand what the allegation of your 8 Complaint means that you are humiliated by this 9 situation?</p> <p>10 A. Well, just that it's mainly the money paid 11 out for the loan.</p> <p>12 Q. Okay.</p> <p>13 A. And, you know, when I have other things that 14 I could pay, need to pay.</p> <p>15 Q. But you acknowledge that you did owe the 16 4,000 that you paid?</p> <p>17 A. Right.</p> <p>18 Q. And you do owe --</p> <p>19 A. Right, and I paid on it without having the 20 motorcycle for how many -- for like a year 21 probably at least in good faith that I would 22 eventually get it.</p> <p>23 Q. But you acknowledge that it's not Capital 24 One's fault?</p>

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Page 30	Page 32
1 A. Right.	1 LAWYER'S NOTES
2 Q. So your loan obligation to Capital One is	2 PAGE LINE NOTATION
3 valid whether you got the bike or not? Don	3 _____
4 Murray stole your money and not Capital One. Do	4 _____
5 you acknowledge that?	5 _____
6 A. Yes.	6 _____
7 MR. CHWASTYK: All right.	7 _____
8 That's all I for you. Thank you.	8 _____
9 MR. WEISBERG: Okay.	9 _____
10 ---	10 _____
11 (Whereupon, the deposition of	11 _____
12 Josiah Kuenzi was concluded at 9:56 a.m.)	12 _____
13 ---	13 _____
14	14 _____
15	15 _____
16	16 _____
17	17 _____
18	18 _____
19	19 _____
20	20 _____
21	21 _____
22	22 _____
23	23 _____
24	24 _____
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1 CERTIFICATION	
2 I HEREBY CERTIFY that I am a Court	
3 Reporter and Notary Public.	
4 I FURTHER CERTIFY that the witness was	
5 sworn to testify to the truth.	
6 I FURTHER CERTIFY that the foregoing is,	
7 to the best of my ability, a true and accurate	
8 transcript of the testimony taken	
9 stenographically by me at the time, place, and	
10 date hereinbefore set forth.	
11 I FURTHER CERTIFY that I am neither a	
12 relative, employee, attorney nor counsel to any	
13 of the parties to the action, and that I am	
14 neither a relative nor employee of such attorney	
15 or counsel and that I am not financially	
16 interested in the action.	
17	
18 Professional Court Reporter	
19 Kimberly Pepper	
20	
21 (The foregoing certification of this transcript	
22 does not apply to any production of the same by	
23 any means, unless under the direction, control	
24 and/or supervision of certifying reporter.)	